**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.4500 OF 1994**

Dr.K.B.Sawant .. Petitioner.

V/s.

The President,

B.N.N. College, Bhiwandi & Ors. .. Respondents.

Shri.Vinod N. Tayade for the petitioner.

None for the respondent though served.

**CORAM : A.P. DESHPANDE, J.**

**DATE : 14TH MARCH, 2007.**

**P.C.:**

1. The respondent No.1 is in the administration and the Management of Arts, Science and Commerce College situated at Bhiwandi, District Thane. The College in question is affiliated to the respondent No.3 University. The service conditions of the employees working in the said College are governed and regulated by the Bombay University Act, 1974.

2. The petitioner was initially appointed as lecturer on 2nd June, 1967 in B.N.N.College. The petitioner came

to be selected and appointed as Principal of the same college on 20th March, 1980. According to the petitioner, a dispute cropped up in two groups of the management of the college sometime in December, 1990 and on account of internal disputes in the management, the petitioner is made a scape-goat. The petitioner came to be suspended w.e.f. 15th March, 1992 and after holding an enquiry, punishment of removal from service was imposed and he came to be removed from the college w.e.f. 28th May, 1993. The order of suspension so also the order of removal was issued by one Shri.K.N.Chimankar, who claimed to be the President of the Mandal and Chairman of the governing body.

3. Aggrieved by the order of removal, petitioner filed an appeal before the Tribunal questioning the legality and validity of the order of removal. Besides challenging the legality and validity of the order of removal, the petitioner also sought declaration that the respondent No.1 is not the President of the Mandal and Chairman of the governing council and further claimed that the respondent No.2 is the real authority, who can act as such. The petitioner challenged the very authority of the respondent No.1 to punish the petitioner. The Tribunal framed the preliminary issue as to whether it has

jurisdiction to hear and decide the appeal and has concluded that it has no jurisdiction to decide the appeal. The Tribunal has pointed out in the impugned order which goes to hold that the Tribunal has no jurisdiction, that the petitioner had sought declaration that as the respondent No.1 had no authority to impose the punishment, the petitioner continues to be in service hence the Tribunal has no jurisdiction. No doubt, memo of appeal is not happily drafted. None the less, fact remains that the petitioner had challenged the order of removal and hence the Tribunal did have the jurisdiction to decide the said appeal in question, on merit.

4. Perused the order passed by the Tribunal. It suffers from patent illegality inasmuch as the Tribunal has jurisdiction to decide the legality of order of removal. The Tribunal has proceeded to hold that it has no jurisdiction to decide the appeal just because the petitioner contended that the respondent No.1 did not have any authority to impose the punishment. The said pleading does not go to oust the jurisdiction. One party may claim someone to be the lawful authority whereas the other may dispute the same, but such a controversy cannot and does not oust the jurisdiction of the Tribunal to decide the legality and validity of the order of removal.

5. None appears for the respondent. Hence, with the assistance of the learned counsel appearing for the petitioner, I have gone through the impugned order passed by the Tribunal and I am convinced that the impugned order is unsustainable in law. In the result, the impugned order passed by the Tribunal holding that it has no jurisdiction to entertain and decide the appeal is illegal and consequently dismissal of the appeal on that count stands vitiated.

6. In the result, writ petition is partly allowed. The impugned order dated 1st September, 1994 passed by the Presiding Officer, College Tribunal in Appeal No.23 of 1993 is quashed and set aside. The matter is remanded to the College Tribunal for De-novo hearing and decision of the same. The Tribunal shall issue notice to the parties and proceed to hear and decide the appeal on merit expeditiously as the impugned order of removal is of the year 1993. I direct the Tribunal to hear the appeal afresh and decide it as expeditiously as possible and preferably within a period of six months from today. Rule is made absolute in the above terms with no order as to costs.

**(A.P. Deshpande, J.)**